IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3600 OF 2006

Sau. Nazima Abdul Aziz ....Petitioner
V/s
Ashok Ramchandra Rajguru & Ors.... ....Respondents.

Mr.V.S.Gokhale, Adv. For the petitioner.

Mr.K.Y.Mandlik, Adv. For the respondent Nos.2 & 3.

Mr.Pramod G. Patil, Adv. For respondent Nos. 6 to 9.

Respondent No.5-in-person.

CORAM: A.P.DESHPANDE, J.
14/9/07

PC:

On oral prayer made for leave to amend the writ petition with a view to challenge the order of dismissal of the suit is granted. Amendment to be carried out forthwith.

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The present petitioner is original plaintiff who has filed a suit against the respondent claiming damages on account defamatory publication of material in the newspaper. The suit came to be filed on 18.1.97 and the petitioner did not pay court fee stamp relying upon the notification dated 1.10.94 issued by the State Government in exercise of powers conferred by section 46 of the Bombay Court Fees Act, 1959. The relevant portion of the notification reads thus:

> "Now, therefore, in exercise of the powers conferred by section 46 of the Bombay Court Fees Act, 1959 (Bom. XXXI of 1959) the Government of Maharashtra hereby remits the fees payable by

women litigants on any of the plaints, applications, petitions, memorandum of appeals on any other documents specified in the First and Second Schedules to the Bombay Court Fees Act to be filed in any Civil Family or Criminal Courts in respect of cases relating to (a) Maintenance; (b) Property disputes; (c) Violence and (d) Divorce."

2. The trial Court by the impugned order dated 1.10.05 relied upon a judgment in the case of ***Babu Jaya Yedage & Ors.,*** v/s ***Kasam Mohammed Patil & Ors.,*** 2004 (4) Mh.L.J.10 and has held that the plaintiff is liable to pay court fee and that she is not entitled to the benefit of notification dated 1.10.94. Consequent upon the said finding a direction has been issued to the plaintiff to pay court fee stamp on the suit claim of Rs.50 lacs within 15 days. I am now informed that the suit has been dismissed for non compliance of order impugned in this petition. By making consequential amendment in the petition said order as well is challenged.

3. The learned counsel for the petitioner has placed reliance on a judgment in the case of ***Usha Badri Poonawalla*** v/s ***K.Kurian Babu,*** 2002 (3) BCR 215. An identical issue emerged for consideration in the said case in identical set of facts. In the said case as well suit was filed for damages based on defamation. The plaintiff had pleaded that the defendant by a communication addressed to fellow member of Rotary Club has written certain defamatory matter and hence the suit was filed for damages based on defamation. Exactly similar position emerged in the present suit.

4. In the context of notification dated 1.10.94 to the extent it deals with remission of court fee payable by women litigant in respect of cases relating to violence has been considered. The learned Single Judge has

observed that women are subjected to various forms of violence and a suit for damages based on defamation would be comprised within the expression "violence" used in the Government notification referred to herein above. The learned Judge has proceeded to declare that the women would be entitled to the benefit of remission of court fee when she files a suit for damages based on defamation. The judgment relied upon by the trial Court deals with a situation wherein the motor accident claim was lodged on ground of accidental death and in the said facts this Court held that the claim for compensation under the Motor Vehicles Act would not be exempted from court fee. The judgment reported in the case of Babu Jaya Yedage 2004 (4) Mh.L.J.10 (supra) deals with a different situation and the judgment rendered by learned Single Judge reported in the case of Usha Badri Poonawalla 2002 (3) BCR 215 (supra) squarely relates to suit for damages based on defamation. Hence I proceed to follow the law laid down in the said judgment and conclude that the petitioner is entitled to the benefit of Government notification dated 1.10.94 and is exempted from payment of court fee. The impugned order thus stands quashed and set aside. In view of quashing of impugned order directing payment of court fee stamp within 15 days the consequential order of dismissal of the suit as well need to be quashed and set aside. Same is also quashed and set aside. Rule made absolute in above terms.

14.9.07